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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,082	09/09/2003	Raymond Joseph Reisdorf	TP2685USNA	1429
23906	7590	09/20/2005	EXAMINER	
E I DU PONT DE NEMOURS AND COMPANY LEGAL PATENT RECORDS CENTER BARLEY MILL PLAZA 25/1128 4417 LANCASTER PIKE WILMINGTON, DE 19805			JUSKA, CHERYL ANN	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/658,082

Applicant(s)

REISDORF ET AL.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 15-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/04, 2/04, 3/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election without traverse of Group I, claims 1-14 in the paper filed July 7, 2005, is acknowledged. Claims 15-26 are hereby withdrawn as non-elected.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 3-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claim 3 is indefinite reciting the *polymer adhesive* is a terpolymer containing 50-90 wt.% ethylene, while claim 1 already limits said adhesive to *consist of* at least 85 wt.% of one or more ethylene copolymers. Thus, claim 3 is broader in scope than the claim from which it depends.
5. Claim 4 is indefinite because it is unclear if the at least 20 wt.% of the polymer adhesive is a copolymer of ethylene and methacrylic acid is in addition to the at least 85 wt.% of ethylene copolymer. If so, then it seems the maximum the ethylene/methacrylic acid copolymer can be present is 15 wt.%. Or, does applicant intend to claim the at least 20 wt.% of the at least 85 wt.% is the specified ethylene/methacrylic acid copolymer. If so, then what is the other 65 wt.% of the polymeric adhesive.

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6. Claim 5 is similarly rejected. Additionally, the scope of claim 5 is unclear since it depends upon claim 4, which already recites the polymer adhesive is at least 20 wt.% ethylene/methacrylic acid copolymer. Does applicant intend to claim that the at least 85 wt.% of ethylene copolymers comprises a blend of at least 20 wt.% ethylene/methacrylic acid and at least 20% ethylene/vinyl acetate? If so, then what is the other 45 wt.% of the polymeric adhesive.

***Claim Rejections - 35 USC § 102/103***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 2, 6-10, and 14 are rejected under 35 USC 102(b) as being anticipated by GB 2 284 152 assigned to Dupont.

Dupont discloses a tufted pile carpet having a polyolefin adhesive backcoat comprising at least one grafted polymer of a polyolefin, an olefin copolymer, or an olefin terpolymer (abstract). The ethylene copolymers include ethylene with at least one of a C<sub>3</sub>-C<sub>10</sub> hydrocarbon alpha-olefin, vinyl acetate, alkyl acrylate, or alkyl methacrylate (abstract). Said alkyl groups include methyl, ethyl, propyl, and butyl (page 8, lines 34-35). The grafted polymer composition is less

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than about 500 dg/min, preferably 10-200 dg/min (page 9, line 35 – page 10, line 7). The face fibers of the tufted carpet may be nylon, polyester, polypropylene, acrylic, rayon, or natural fibers (abstract). the primary backing may be a woven or nonwoven material of natural, rayon, nylon, polyester, or polyolefin fibers (page 7, lines 24-32). The secondary backing may be jute, woven tapes of polypropylene, plain woven polypropylene fabrics, felts, and thermoplastic films (page 14, lines 31-37).

Thus, Dupont teaches the invention of claims 1, 2, 6-10, and 14 with the exception of the claimed tenacity, adhesion to polyamide, and fiber retention index. However, it is reasonable to presume that said limitations are inherent to the invention. Support for said presumption is found in the use of similar materials (i.e., polymer adhesive of ethylene copolymers having like melt flow properties) and in the similar production steps (i.e., extruding said polymer adhesive onto a carpet backing) used to produce the carpet. The burden is upon applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 495. In the alternative, the claimed properties would obviously have been provided by the process disclosed by Dupont. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102. Therefore, claims 1, 2, 6-10, and 14 are rejected.

### ***Claim Rejections - 35 USC § 103***

10. Claims 3-5 are rejected under 35 USC 103(a) as being unpatentable over the cited Dupont reference.

While Dupont fails to explicitly teach the specified monomer amounts of the copolymer and terpolymer compositions, said limitations are deemed obvious over the prior art.

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Specifically, it would have been obvious to one skilled in the art to employ the monomers in the amounts recited by applicant, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Therefore, claims 3-5 are rejected as being obvious over the cited Dupont reference.

11. Claims 11 and 12 are rejected under 35 USC 103(a) as being unpatentable over the cited Dupont reference in view of US 4,522,857 issued to Higgins.

Dupont fails to explicitly teach the use of a reinforcing grid between the primary backing and the secondary backing. However, said use is well known in the art of carpets. For example, Higgins teaches a fiberglass scrim, nonwoven, or woven fabric as reinforcing or stabilizing layer embedded within the adhesive backcoat in between the primary backing and the secondary backing (col. 1, lines 48-55). Thus, it would have been readily obvious to one of ordinary skill in the art to employ such a fiberglass reinforcing layer in order to enhance the dimensional stability of the carpet. Therefore, claims 11 and 12 are rejected.

12. Claim 13 is rejected under 35 USC 103(a) as being unpatentable over the cited Dupont reference in view of US 3,867,188 issued to Campbell et al.

Regarding claim 13, Dupont teaches the primary backing may be a nonwoven fabric and it may be made of polyolefin fibers. However, Dupont fails to explicitly teach said nonwoven primary backing is a spunbond nonwoven. Campbell teaches it is readily known to employ spunbond nonwoven fabrics as primary backings for tufted carpets (col. 1, lines 49-59). Hence, it would have been readily obvious to employ a spunbond nonwoven as the primary backing of

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the Dupont invention since said nonwovens are conventional in the art and produce successful carpets. Therefore, claim 13 is also rejected.

### *Conclusion*

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CHERYL A. JUSKA  
PRIMARY EXAMINER

cj  
September 16, 2005